


| | | |
|---|--|-------------------------------------|
|  | INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL | |
| | Chapter 13: Background Checks | Effective Date: June 1, 2021 |
| | Section 16: Waivers | Version: 1 |

STATEMENTS OF PURPOSE

Refer to this policy only after completion of steps in the [Chapter 13 policies](#) regarding Evaluating Background Checks.

The Indiana Department of Child Services (DCS) may grant a waiver of disqualified juvenile history or substantiated Child Protective Services (CPS) history. DCS shall not grant a waiver for disqualifying criminal history if the subject of the check has been convicted or has charges pending for any of the felonies listed below:

1. Murder ([IC 35-42-1-1](#));
2. Causing suicide ([IC 35-42-1-2](#));
2. Assisting suicide ([IC 35-42-1-2.5](#));
3. Voluntary manslaughter ([IC 35-42-1-3](#));
4. Involuntary Manslaughter ([IC 35-42-1-4](#));
5. Reckless homicide ([IC 35-42-1-5](#));
7. Feticide ([IC 35-42-1-6](#));
8. Battery ([IC 35-42-2-1](#)) within the last five (5) years;
9. Domestic Battery ([IC 35-42-2-1.3](#));
10. Aggravated battery ([IC 35-42-2-1.5](#));
11. Criminal recklessness ([IC 35-42-2-2](#)) within the past five (5) years;
12. Strangulation ([IC 35-42-2-9](#));
13. Kidnapping ([IC 35-42-3-2](#));
14. Criminal confinement ([IC 35-42-3-3](#)) within the last five (5) years;
15. Human and sexual trafficking ([IC 35-42-3.5](#));
16. A felony sex offense under ([IC 35-42-4](#));
17. Arson ([IC 35-43-1-1](#)) within the last five (5) years;
18. Incest ([IC 35-46-1-3](#));
19. Neglect of a dependent ([IC 35-46-1-4\(a\)](#)) ([IC 35-46-1-4\(b\)](#));
20. Child selling ([IC 35-46-1-4\(d\)](#));
21. Reckless supervision ([IC 35-46-1-4.1](#));
22. Nonsupport of a dependent child ([IC 35-46-1-5](#)) within the past five (5) years;
23. Operating a motorboat while intoxicated ([IC 35-46-9-6](#)) within the past five (5) years;
24. A felony involving a weapon ([IC 35-47](#)) within the last five (5) years;
25. A felony offense relating to controlled substances ([IC 35-48-4](#)) within the last five (5) years;
26. An offense relating to material or a performance that is harmful to minors or obscene under ([IC 35-49-3](#));
27. A felony under [IC 9-30-5](#) (driving while intoxicated) within the past five (5) years;
28. A felony related to the health or safety of a child (as defined in [IC 31-9-2-13\(h\)](#)) or an endangered adult (as defined in [IC 12-10-3-2](#));
29. Attempt ([IC 35-41-5-1](#)) to commit a felony listed in subdivisions one (1) through 28. If a conviction for a felony is non-waivable for a stated duration under subdivisions one (1) through 28, a conviction for an attempt to commit the felony is non-waivable for the

- same duration under this subdivision; and
30. A felony that is substantially equivalent to a felony described in subdivisions one (1) - 28 for which the conviction was entered in another jurisdiction. If a conviction for a felony is non-waivable for a stated duration under subdivisions one (1) through 28, a conviction for a substantially equivalent felony in another jurisdiction is non-waivable for the same duration under this subdivision.

The decision of the [Background Check Waiver Committee](#) regarding criminal and/or CPS waiver is not subject to appeal. However, if the subject's situation were to change and/or additional information is obtained, a new waiver packet may be submitted for re-evaluation by the Central Office Background Check Unit (COBCU). A new evaluation will be completed and a subsequent official decision issued.

If the waiver is not granted, the following applies:

1. **Adoptions:** DCS cannot recommend the adoption.
2. **Unlicensed out-of-home placement:** DCS cannot support or recommend the placement of the child in the home or with the applicants, even if the court orders the placement over DCS objection.

Note: If the court orders the placement over DCS' objection, DCS must follow the court order, but DCS must continue to object to the placement at each court hearing while the child remains in the placement.

3. **Foster family home licensing:** The licensing worker¹ will immediately recommend denial or revocation of the foster family home license.
4. **Residential and Child Placing Agencies (referred to collectively as "DCS Licensed Agencies") licensing:** The manager, employee, intern, volunteer, contractor, or subcontractor may not be hired or volunteer in a DCS Licensed Agency. If the subject of the check is already hired or volunteering, the DCS Licensed Agency will immediately remove the employee or volunteer from the work schedule.
5. **DCS Contractor and Subcontractor (referred to collectively as "DCS Contractor"):** The employee or volunteer may not be hired or volunteer with the DCS Contractor. If already employed or volunteering, the DCS Contractor will complete the following for the appropriate level:
 - a. **A-1 level covered personnel:** Ensure the subject of the check, if A-1 level covered personnel, will not be employed or volunteer in any capacity in which the subject of the check has, or will have, access to the facility where children are housed or will be present, or any contact where a child is alone or only with contractor's staff in connection with the performance of any services or activities pursuant to the contract/subcontract with DCS, or
 - b. **A-1 and A-2 level covered personnel:** Ensure the subject of the check, if A-1 and A-2 level covered personnel, will not be employed or volunteer in a capacity where the subject of the check has or will have electronic or physical access to any records of children in connection with the performance of any services or activities pursuant to the contract/subcontract with DCS.

¹ The licensing worker refers to the DCS Regional Foster Care Specialist (RFCS) or the Licensed Child Placing Agency (LCPA) worker

Code References

1. [IC 31-27-2-8: Granting of variances and waivers](#)
2. [IC 31-27-2-9: Expiration of variances and waivers](#)
3. [IC 31-27-2-10: Renewal of variances and waivers](#)
4. [IC 31-27-2-11: Revocation of variances and waivers](#)
5. [IC 31-27-4-12: Eligibility for waivers and variances](#)
6. [IC 31-34-4-2: Placement of child with relative caretaker or de facto custodian; evaluation; criminal history check required; exceptions; out-of-home placement; considerations](#)
7. [42 U.S.C. 471\(a\)\(20\)\(A\): Family First Preservation Services Act](#)

PROCEDURE

To request a waiver, the person who conducted the background check will:

1. Instruct the subject of the check to contact the DCS COBCU Consultant listed on the Fingerprint-Based Check Status Letter if the fingerprint-based status returns as disqualified, in order to determine whether the subject of the check is eligible to apply for a waiver; and
2. Work with the subject of the check to submit a complete waiver packet to the COBCU if eligible. See below for the required timeframes to submit each waiver packet:
 - a. **Adoption:** The packet must be submitted within 10 business days from the date of the disqualified Fingerprint-Based Check Status Letter or discovery of CPS history. See 13.A Tool: Adoption Waiver Packet for more information,
 - b. **Emergency unlicensed placement when the child is already living in the home:** The packet must be submitted within 10 business days from the date of the disqualified Fingerprint-Based Check Status Letter or discovery of CPS history. See 13.B Tool: Emergency Unlicensed Out-of-Home Waiver Packet.

Note: The DCS local office, in conjunction with DCS COBCU, must re-evaluate the appropriateness and safety of the child in the home upon discovery of new and/or previously unknown criminal history and/or CPS substantiation.

- c. **Unlicensed out-of-home placement when the child is not already placed in the home:** The packet must be submitted as quickly as possible. See 13.B Tool: Unlicensed Out-of-Home Placement Waiver Packet for additional information;
- d. **Foster family home licensing (during initial licensure):** The packet must be submitted as quickly as possible. See 13.C Tool: Foster Family Home Licensing Waiver Packet for additional information;
- e. **Foster family home licensing (after initial licensure):** The packet must be submitted within 10 business days from the date of the disqualified Fingerprint-Based Check Status Letter or discovery of CPS history. See 13.C Tool: Foster Family Home Licensing Waiver Packet for additional information;

Note: Failure to complete or make sufficient progress toward the waiver may result in negative licensing action. Subjects of the check may not move into a currently licensed foster family home until the waiver is granted by COBCU.
- f. **DCS Licensed Agency and DCS Contractor:** The packet must be submitted as quickly as possible. See 13.D Tool: Residential and Child Placing Agency Waiver Packet and 13.E Tool: DCS Contractor Waiver Packet for additional information.

Note: A request for a criminal and/or CPS waiver should be filed and processed at the following times:

- a. Prior to contract execution,
- b. Initial agency licensing,
- c. Agency re-licensure,
- d. Hiring, including a change in position, and
- e. Discovery of any additional criminal or CPS substantiations, which have not previously been granted a criminal and/or CPS waiver if discovered between these points.

The COBCU Manager or designee will:

1. Submit the recommendation to the [Background Check Waiver Committee](#) for a joint decision within three (3) business days; and
2. Notify, by e-mail, the DCS Contractor, DCS Licensed Agency, or DCS Local Office's assigned contact person of the waiver decision. A decision will be returned in approximately 10 business days, via e-mail, after submission to the [Background Check Waiver Committee](#) members. The status will be "waiver granted" or "waiver not granted".

Note: Additional information may be requested, which will delay the issuance of the final waiver status. Additional information may be needed to submit a complete waiver, or after the waiver is submitted, questions may be asked by the [Background Check Waiver Committee](#) members. Failure to submit the requested information by the stated deadline may result in a waiver denial.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. 13.A Tool: Adoption Waiver Packet
2. 13.B Tool: Unlicensed Out-of-Home Placement Waiver Packet
3. 13.C Tool: Foster Family Home Licensing Waiver Packet
4. 13.D Tool: Residential and Child Placing Agency Waiver Packet
5. 13.E Tool: DCS Contractor Waiver Packet

RELATED INFORMATION

Covered Personnel

Covered personnel is any person that is required by a contract or DCS policy to have some level or type of a background check as a DCS contractor, subcontractor, administrator, employee, and/or volunteer. The two (2) levels of covered personnel are:

1. A-1 Level Covered Personnel: Personnel employed or volunteering in a capacity in which the subject of the check has the expectation of direct contact with children, in connection with performance of any services or activities pursuant to the contract with DCS; and

Note: Personnel designated as A-2 Level Covered Personnel could become A-1 Level Covered Personnel at any time as duties or responsibilities change to include A-1 Level Covered duties, services, or activities.

2. A-2 Level Covered Personnel: Personnel employed or volunteering in a capacity in which the subject of the check has the expectation of electronic or other access to children's child

welfare or DCS information, in connection with performance of any services or activities pursuant to the contract with DCS.

Note: Personnel designated as not A-2 Level Covered Personnel could become A-2 Level Covered Personnel at any time as duties or responsibilities change to include A-2 Level Covered duties, services, or activities.

Other Access to Information

For purposes of the A-2 Level Covered Personnel definition, other access to a child's child welfare or DCS information includes both access to physical records and access to overhear information about a child's child welfare or DCS information.

Direct Contact with Children

For purposes of A-1 and A-2 Level Covered Personnel definitions, direct contact with children means any direct contact with a child, regardless of whether another adult or a parent is present.

Background Check Waiver Committee for DCS

The following members make up each Background Check Waiver Committee. Additional members may be consulted if needed:

1. **DCS Contractor:** Deputy Director of Child Welfare Services, DCS LOD, DCS RM, and the COBCU Team Manager or designee.
2. **DCS Licensed Agencies:** Residential Licensing Manager, DCS LOD, DCS RM, and the COBCU Team Manager or designee.
3. **Adoptions:** Adoption and Youth Connections Programs Manager, the DCS LOD, DCS RM, and the COBCU Team Manager.
4. **Foster Family Home Licensing:** Foster Family Home Licensing Programs Manager, DCS LOD, DCS RM, and the COBCU Team Manager or designee.
5. **Unlicensed Placements:** DCS LOD, DCS RM, and the COBCU Team Manager or designee.

Waiver Considerations for Criminal and/or CPS History

DCS Contractors and DCS Licensed Agencies

When evaluating background check information, the components considered by the DCS Contractor or DCS Licensed Agency and the [DCS Background Check Waiver Committee](#) should include, but are not limited to:

1. The length of time that has passed since the conviction, juvenile adjudication, or CA/N substantiation;
2. The severity of the offense;
3. Evidence of the person's rehabilitation, including current involvement in treatment for alcohol or drug use (especially if these contributed to previous criminal behavior or CPS substantiation); and
4. Duties of the applicant.

Adoptions

When evaluating background check information, the components considered by the adoption worker ² and the [DCS Background Check Waiver Committee](#) should include, but are not limited to:

1. The current home environment;
2. The ability of the proposed adoptive parent(s) to provide for the child's safety and well-

² The adoption worker refers to the DCS or the LCPSA worker.

- being;
- 3. The length of time that has passed since the conviction, juvenile adjudication, or CA/N substantiation;
- 4. The severity of the offense;
- 5. Evidence of the person's rehabilitation. This includes reviewing all elements of the subject's current situation, lifestyle, and judgements. Examples include, but are not limited to:
 - a. Review of dates and reasons of unsubstantiated CPS reports,
 - b. Arrests without convictions,
 - c. Police runs to the subject's residency, and
 - d. Current involvement in treatment for alcohol or drug use (especially if these contributed to previous criminal behavior or CPS substantiation).
- 6. The duration and quality of the relationship between the child and the proposed adoptive family; and
- 7. Any impact the denial of the placement may have on the ability to keep the sibling group together, if applicable.

Foster Family Home Licensing

When evaluating background check information, the components considered by the licensing worker and the [DCS Background Check Waiver Committee](#) should include, but are not limited to:

- 1. The current home environment;
- 2. The ability of the proposed resource parent(s) to provide for the child's safety and well-being;
- 3. The length of time that has passed since the conviction, juvenile adjudication, or CA/N substantiation;
- 4. The severity of the offense;
- 5. Evidence of the person's rehabilitation. This includes reviewing all elements of the subject's current situation, lifestyle, and judgements. Examples include, but are not limited to:
 - a. Review of dates and reasons of unsubstantiated CPS reports,
 - b. Arrests without convictions,
 - c. Police runs to the subject's residency, and
 - d. Current involvement in treatment for alcohol or drug use (especially if these contributed to previous criminal behavior or CPS substantiation).
- 6. The duration and quality of the relationship between the child and the proposed resource family; and
- 7. Any impact the denial of the placement may have on the ability to keep the sibling group together, if applicable.

Unlicensed Placements

When evaluating background check information, the components the licensing worker and the [DCS Background Check Waiver Committee](#) should consider include, but are not limited the following:

- 1. The current home environment;
- 2. The ability of the unlicensed resource parent(s) to provide for the child's safety and well-being;
- 3. The length of time that has passed since the conviction, juvenile adjudication, or CA/N substantiation;
- 4. The severity of the offense;

5. Evidence of the person's rehabilitation. This includes reviewing all elements of the subject's current situation, lifestyle, and judgements. Examples include, but are not limited to:
 - a. Review of dates and reasons of unsubstantiated CPS reports,
 - b. Arrests without convictions,
 - c. Police runs to the subject's residency, and
 - d. Current involvement in treatment for alcohol or drug use (especially if these contributed to previous criminal behavior or CPS substantiation).
6. The duration and quality of the relationship between the child and the unlicensed resource family; and
7. Any impact the denial of the placement may have on the ability to keep the sibling group together, if applicable.